



THE LIBRARY



THE UNIVERSITY OF
BRITISH COLUMBIA

INTERNATIONAL FISHERY DISPUTES.

BY
T. H. HAYNES.



CASSELL & COMPANY, LIMITED:

LONDON, PARIS & MELBOURNE.

[ALL RIGHTS RESERVED.]

How to

INTERNATIONAL FISHERY DISPUTES.

PART I.

AT the present moment Fishery disputes are causing more international and intercolonial trouble than any other subject, and in attempting to reduce to an orderly basis a range of subjects so diverse as fishery operations, it is useless to expect any permanent good unless all the existing disputes are examined together.

They are as follows :—

1. The Behring Sea question between England and the United States. This is one mainly of territorial jurisdiction.
2. The Newfoundland Fishery question between Canada, Newfoundland, and the United States. One of commercial intercourse complicated by the 1818 Treaty-clause of renunciation.
3. The difficulty between France and Newfoundland concerning the "French shore" on the west coast, this being dependent upon the interpretation of the Treaty of 1713 and subsequent confirmations of the same and the declaration of King George III. in 1783.
4. The dead-lock between Newfoundland and France over the eastern "Bank" fisheries, this being one of commercial intercourse and French bounties.

Law 610

5. The dispute between British pearlers and Western Australia, involving questions of territorial jurisdiction and commercial intercourse.
6. The claims of Queensland to territorial rights over certain portions of the high seas west of Torres Straits in so far as British pearlers are concerned.
7. Behind these lies the question of the Ceylon pearl fisheries referred to by Mr. Blaine as appertaining to England; and this also is a matter of territoriality.

It will be seen that throughout all these disputes, with the exception of that of the French shore, two great questions require settlement:—

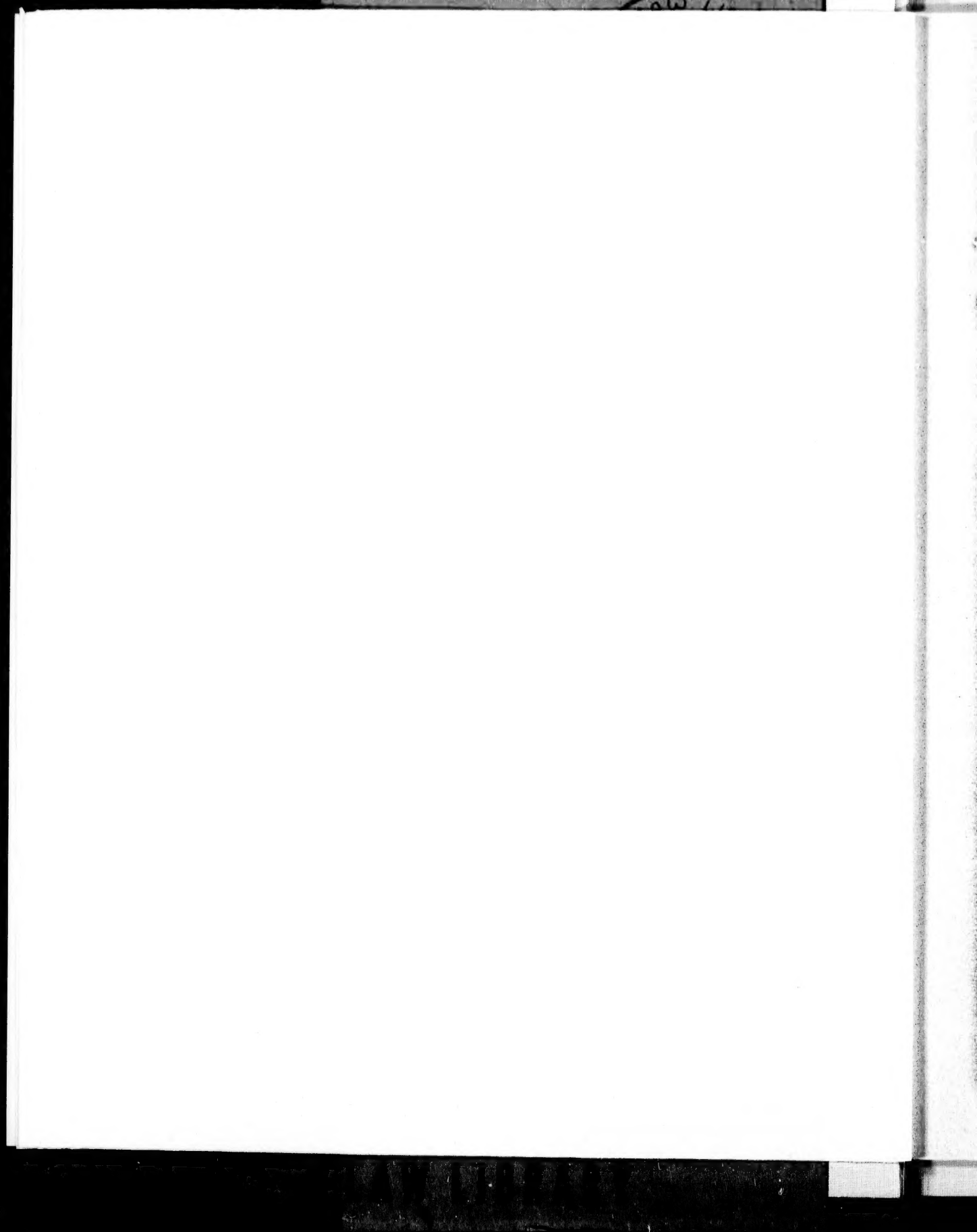
- (a) The definition of territorial waters.
- (b) The extent of commercial intercourse between foreign fishermen and the countries adjacent to international fisheries.

Bound up also with the subject of maritime rights is the moral responsibility resting on maritime countries to guard mariners generally from dangers adjacent to their coasts. This I will deal with under the head of *territorial waters*.* The by-issue of policeing fleets fishing on the high seas I will append to the question of commercial intercourse.

Before taking up these two subjects I will briefly enumerate the various industries that the consideration of these subjects affects. The world's fisheries comprise:—

- (a) Whaling upon the high seas by vessels fitted out from distant countries for long periods like three years, such as whalers fitted out in Maine, U.S.A., for fishing in the Pacific Ocean. Such vessels have always been in the

* For brevity's sake, the terms "inshore" and "offshore" will often be employed for "territorial" and "extra-territorial."



habit of resorting to any adjacent port when in want of anything, without let or hindrance.

- (b) Sealing on more limited stretches of the sea by vessels fitted out for shorter seasons corresponding with certain habits of the seals (both fur and oil), and these vessels also visit adjacent coasts and ports occasionally for shelter and other purposes.
- (c) Pearling over extended stretches of sea shallow enough for diving, the vessels employed being fitted out for two years, and their cruises being prolonged beyond that period, their papers being renewed by post, and their crews changed by passing steamers. These vessels also come inshore for wood, water, shelter, etc.
- (d) Sponge and coral diving in shallow seas.
- (e) Beche-de-mer (sea-slug) collecting and diving in shallow waters by vessels fitted out for long periods and distant voyages.
- (f) Fishing for true fish, such as cod, by hook and line or otherwise, by means of vessels fitted out for shorter seasons, working over more strictly defined areas, and coming inshore or being visited at sea for necessary purposes.

All these vessels have crews signed on "foreign-going" articles, and they clear outwards according to their occupations for a whaling, sealing, pearling, or other cruise, or for Guam, an island in the North Pacific used in nautical parlance for the purpose of hiding the true destination of the ship for commercial reasons. In all respects they are on the same footing as "foreign-going" merchantmen, in contradistinction to "coasters," which do not carry bonded stores, and they all require more or less communication with the coasts they may be in proximity of, for shelter and other necessary purposes.

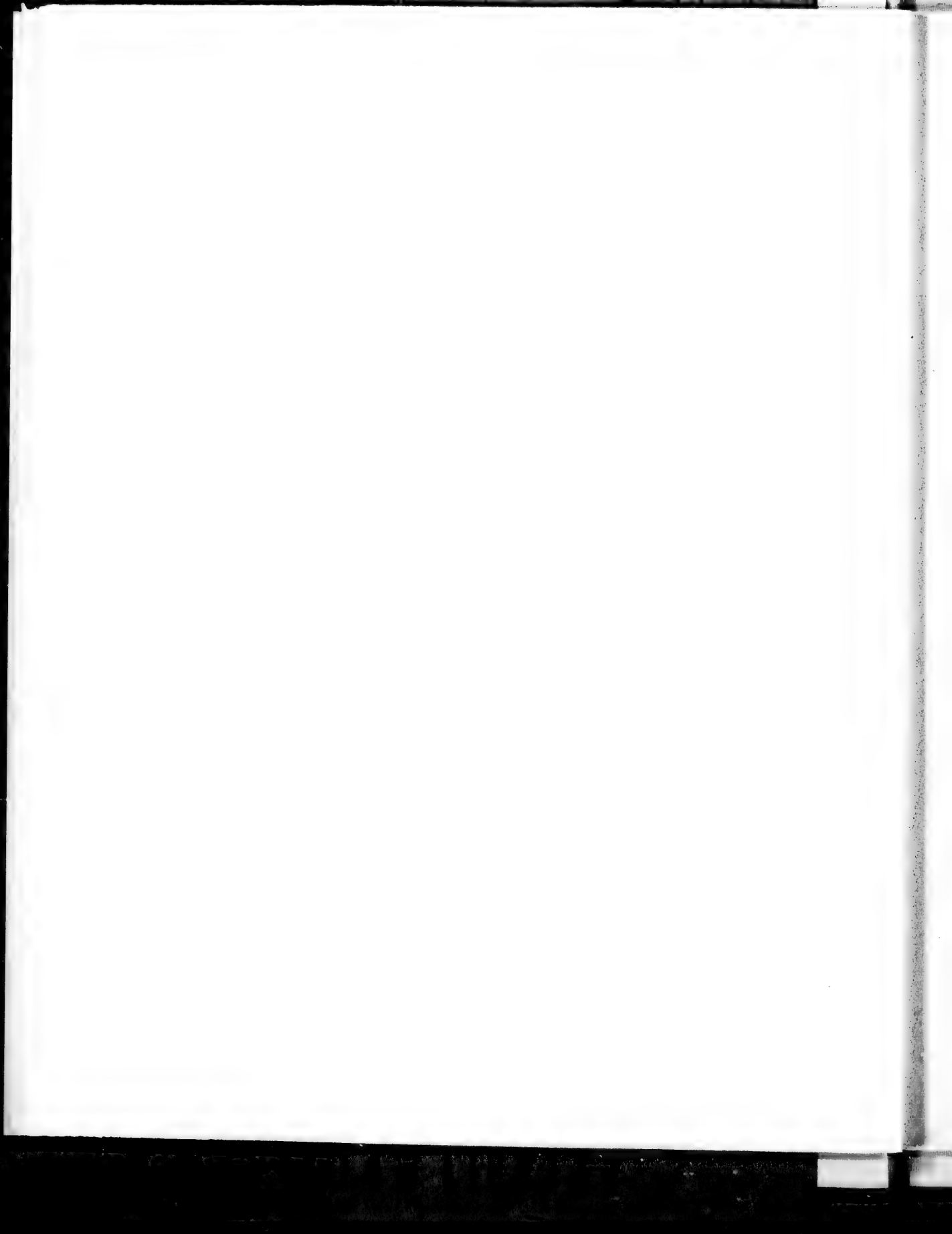
How

TERRITORIAL WATERS.

With a few unimportant exceptions, which for the sake of uniformity might well be swept away, it is generally recognised that every maritime country exercises jurisdiction and claims territorial rights over the sea within three miles of her coasts; islands, rocks, and reefs, which are dry at low water, when lying beyond such limit, are usually claimed by the adjacent country with a similar three miles of sea around them. Any portion of the sea which is enclosed by such dry land belonging to any one power is a "closed sea" (*mare clausum*) so long as any opening thereto does not exceed six miles in width—that is to say, when the three-mile limits from point to point intersect. This international arrangement forms a suitable basis for a definite settlement, but is not in accord with the ten-mile headland practice. There is, however, another element, that of depth, hitherto unconsidered, which deserves attention in determining how far territorial waters', responsibilities, and advantages shall extend.

Upon every maritime country there devolves a moral responsibility to light or buoy adjacent dangers to navigation, such as sunken rocks and shoals on which vessels might strike. Again, if a sunken wreck is discovered in water shallow enough to make it a danger to passing vessels the adjacent country is expected to remove it.* The responsibility of a maritime country is therefore determined by the extent of shoal ground around its coasts, and this may be termed *submerged land*. There is, however, no corresponding advantage accruing to it for the services performed on behalf of all nations; and as depth regulates the responsibilities, so depth should determine the advantage, by the extension of territorial rights beyond the three-mile limit, say, for argument's sake, to seven fathoms, irrespective of the state of the tide, so that in such waters a cast of the lead would answer any doubt as to the position of a vessel.

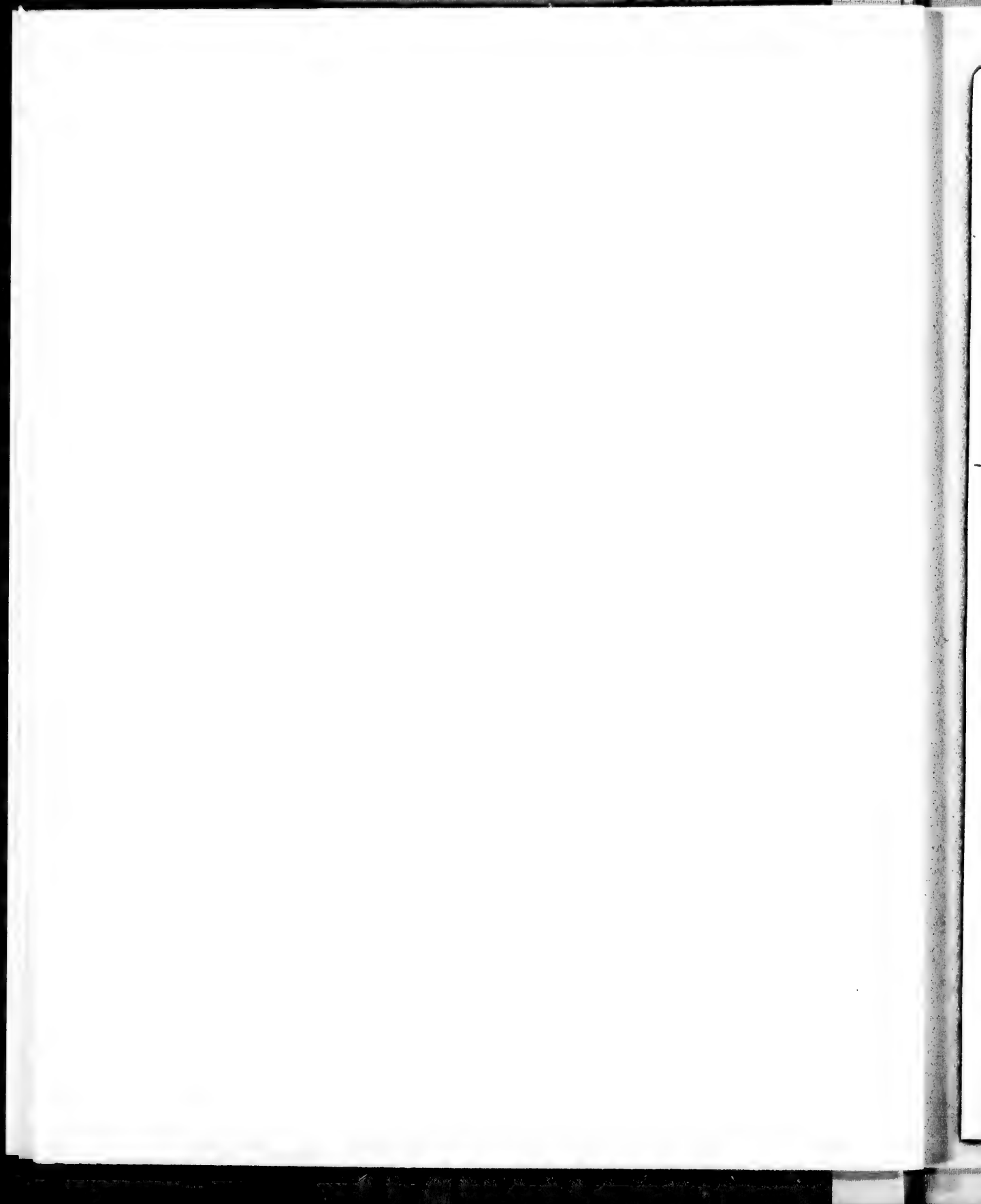
* On the 16th March, this year, a lifeboat struck on the wreck of the *Danmark* and was seriously injured. This wreck was one which the Board of Trade had refused to remove, notwithstanding the advice of the Trinity House Committee that it was dangerous.



It may be urged, What is the use of such extended rights to a country? Wherein lies the advantage? I would reply that the development of the world and its arts is still young. Wherever a diver can reach the bottom structures can be built up to the surface, whereon a flag may be hoisted, forts constructed, shelter and rendezvous for vessels; masonry shafts may also be erected, and coal mined from beneath the sea-bed; nurseries for fish may be established, or uses found for new marine products only to be gathered successfully by divers.

Others may reply that the extension of territorial waters would entail additional responsibilities in the maintenance of peace in neutral waters between belligerents, and in penalties through failure to do so. But surely our sense of justice can devise some arrangement acceptable to the nations whereby belligerents in neutral waters should indemnify the nation owning those waters within which the offence is committed, and can recognise that some reasonable limit should be placed on the ridiculous necessity for a weak nation, for instance, being called upon to keep the peace between two ships or fleets of first-class powers at pain of indemnity or of being dragged into the vortex of war. The means of detecting and preventing petty offences within territorial waters of possibly great expanse may be left to the genius of aeronauts, submarine naval constructors, and others.

I will only give one striking instance of great service performed to a great extent gratuitously for the benefit of all shipping—viz., the lighting, beaconing, and buoys of the intricate steamer track, some six hundred miles in length, down the east coast of Queensland. Before this was done every vessel attempting the passage was absolutely compelled to anchor at sunset, being unable to proceed in darkness. This passage is used, for instance, by steamers bound from Sydney to Singapore direct, but they pay nothing for this magnificent service to navigation.



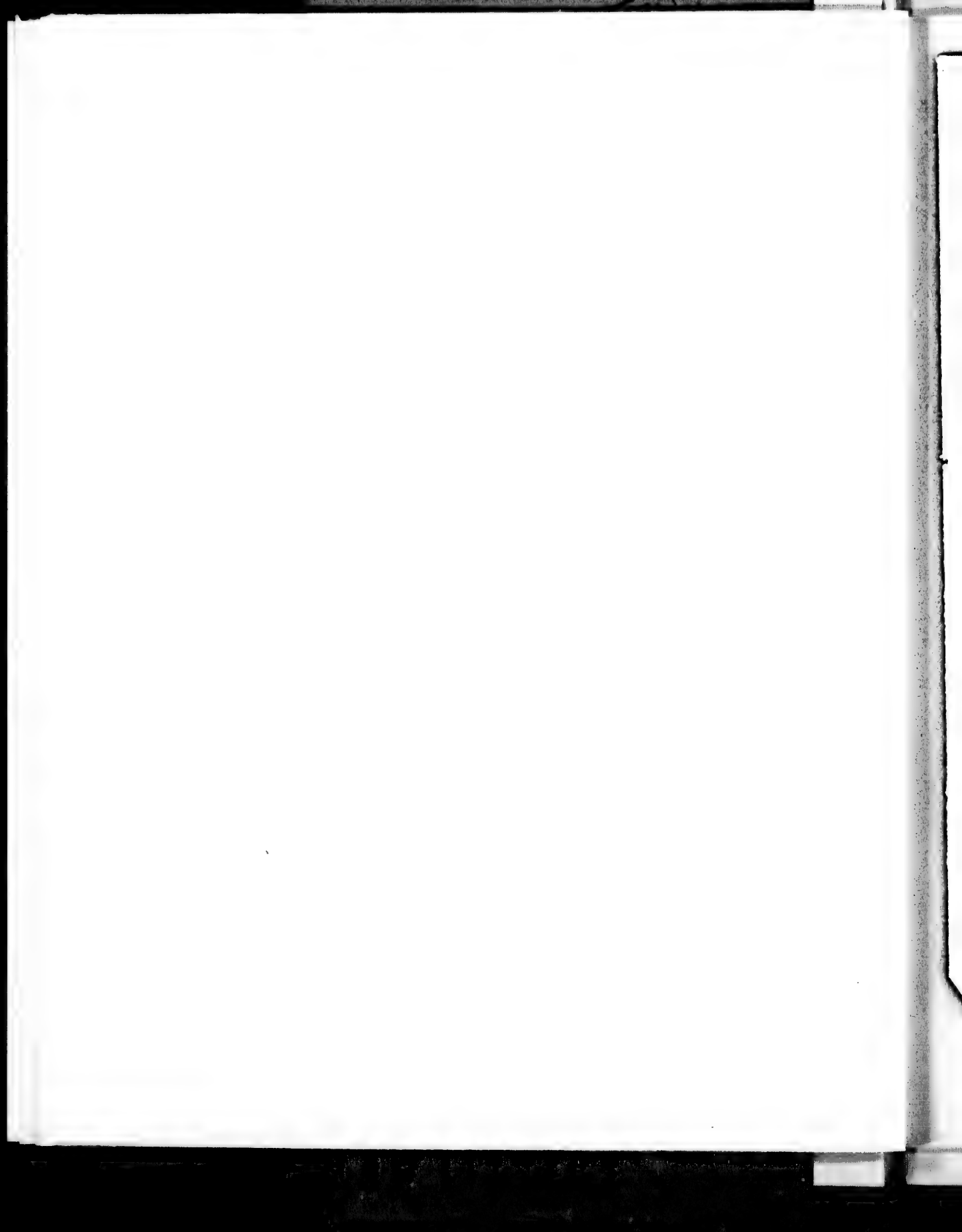
COMMERCIAL INTERCOURSE WITH FOREIGN VESSELS.

In time of war between two nations the merchantmen of the one cannot enter the ports of the other except under pain of seizure and confiscation. In times of peace merchantmen are universally admitted into foreign ports; were it otherwise no commerce between the nations could be carried on, and a state of things would prevail that would practically amount to war, or rather peace without friendship. As a matter of fact, merchantmen are universally admitted into foreign ports on payment of the ordinary port charges, and these are frequently greatly reduced if the visit is caused through distress. Distress is not strictly defined, but may be occasioned by loss of officers or crew; sickness; mutiny; injury to hull, engines, spars, or gear; fire; stress of weather; shifting of cargo; want of water, fuel, or provisions; &c.

A merchantman in a foreign port is allowed the following privileges :—

- (1) To land cargo or ship cargo or stores in bond.
- (2) To engage or pay off men under certain necessary conditions.
- (3) To bring offenders before the local or consular authorities.
- (4) To obtain medical aid, or to bury bodies ashore.
- (5) To obtain wood and water.
- (6) To effect repairs ashore or afloat.
- (7) To lie at anchor at will.
- (8) To use the existing means of communication.
- (9) To give liberty to crew to visit the shore.
- (10) To tranship cargo in bond.
- (11) To purchase coal, ice, fresh meat, fish, vegetables, and other natural products.

The port she may be in may not be her declared port of destination, but her welcome is assured, as she is sure to spend money in the port.



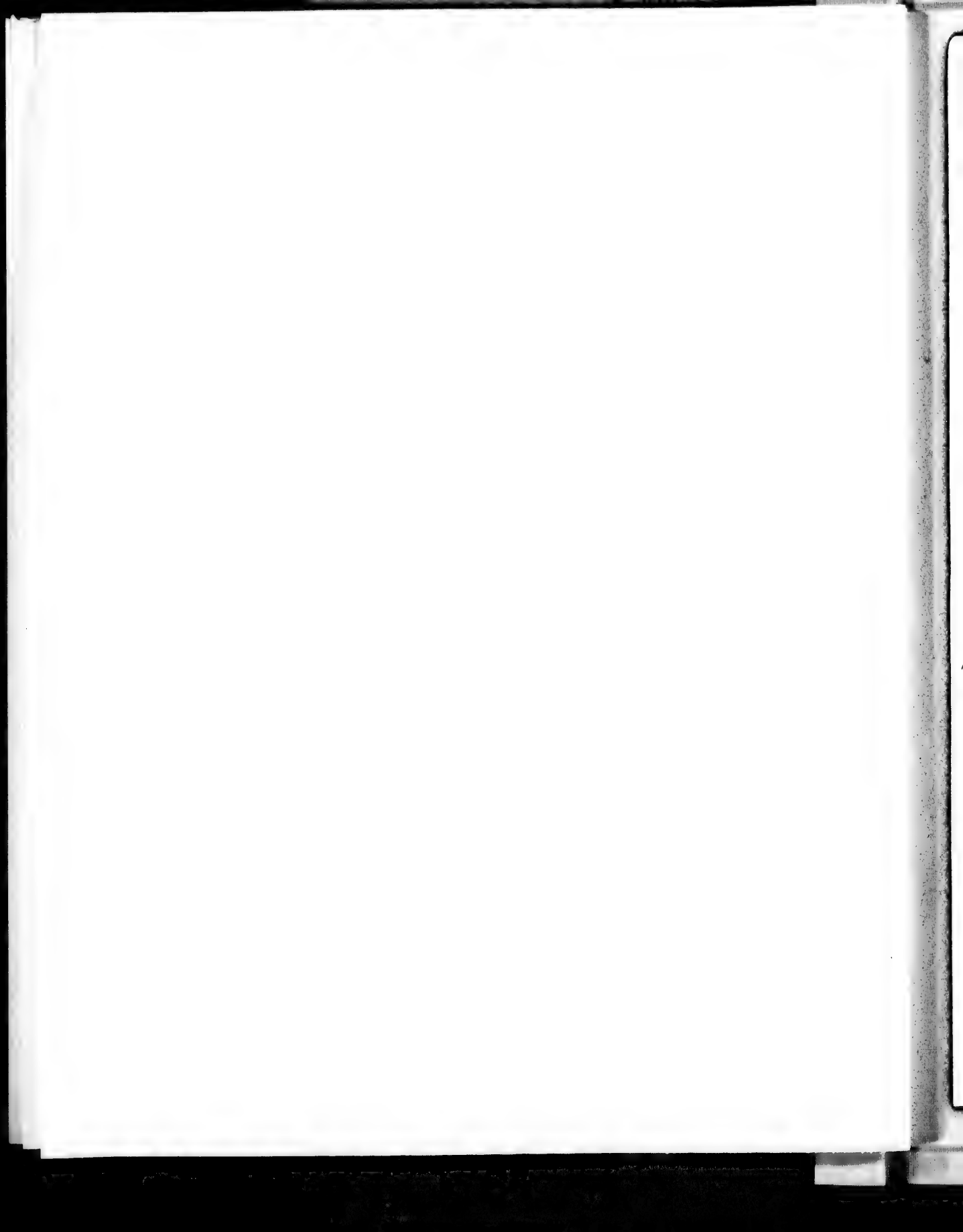
It must not be imagined that these privileges were conceded to foreign merchantmen by England or reciprocally to English merchantmen by foreigners without a struggle. The battle of Free Navigation was fought concurrently with that of Free Trade. In 1815 American ships were for the first time allowed to carry British exports, and this privilege was gradually extended to other foreign nations with like concessions to British ships. In 1824 imports were to a certain extent opened to foreign bottoms by the repeal of the Navigation Laws, and in 1849 and the five following years complete free trade in navigation was established as far as Great Britain was concerned.

This was one outcome of Cobden's cry for "Free Trade, peace and good will among nations."

The high seas are the highway for all vessels of all flags, and the coasts thereof afford the natural shelter for all ; no nation with any claim to civilisation can, under plea of the sovereign rights of man, deny to mariners the provision of God ; neither can a nation deny a foreign vessel the means of avoiding a state of distress, or compel her to have recourse to an incommodious and vexatious alternative without disregarding international courtesy, and approaching sensibly a state of war.

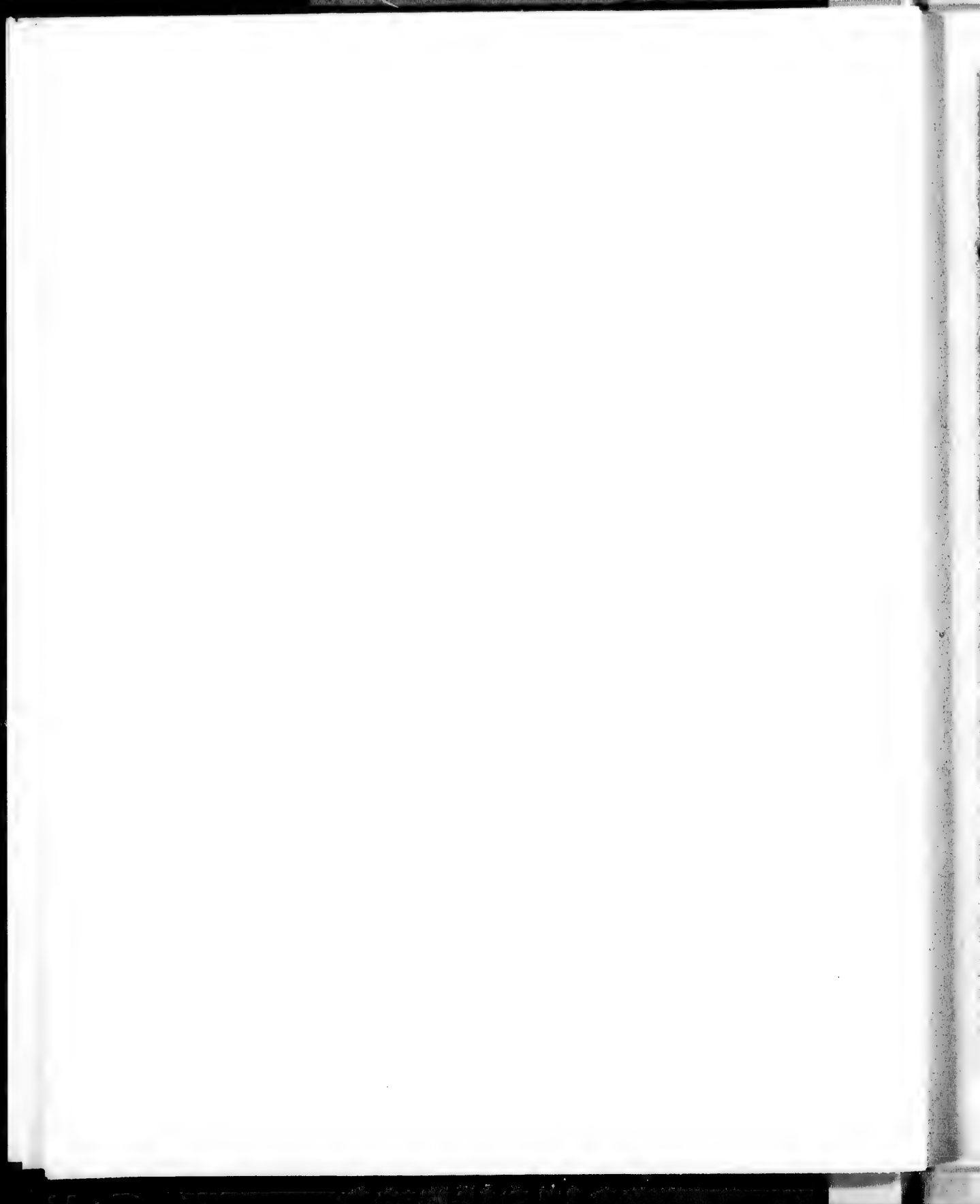
Turning, however, to foreign fishing vessels, we find that the country adjacent to an international fishery frequently denies them the privileges she would grant to merchantmen, in order either to give her own fishermen an advantage over foreigners in the means of successfully using a fishery common to all, or to exact a revenue from it, as instanced by the action of Canada towards American fishermen in the Atlantic, Newfoundland towards Frenchmen in the same ocean, and Western Australia against the British flag in the Indian Ocean. This denial of ordinary commercial intercourse requires clear explanation, and I will take the case of Canada and the United States in the Atlantic, leaving any treaty-contract for the moment out of the discussion, on the assumption that if any treaty exists that offends against the laws of humanity or true international courtesy it is scarcely worth maintaining by any honourable nation.

Canada admits the right of American fishermen to visit her



coasts for wood, water, shelter, and repairs, by virtue of the Treaty of 1818, but "for no other purpose," and she refuses freely to concede permission to them to use her coasts as "a base of operations" without some concession in return. That is to say, out of the eleven privileges granted freely to merchantmen she only grants to American fishermen Nos. 5 and 6 in full and No. 7 partially. Nos. 1, 2, 10, 11, she certainly objects to concede without a *quid pro quo*. In actual practice, no doubt, she concedes a little more in cases of distress, and would as an act of grace permit the purchase of articles absolutely necessary for immediate repairs, but she declines to permit them generally to refit in her ports: that is to say, if both anchors are lost, a new one may be purchased; but if a spare one be lost, it may not be replaced; if her sails have been blown away and she is helpless, leave to purchase canvas would be granted to make new ones, but if the sails have not been blown away, canvas may not be supplied to meet a future emergency. Again, she may anchor inshore in smooth water under lee of the land to escape bad weather, but she may not tranship her catch there to a passing steamer bound to an American port. A merchantman may buy fresh fish for breakfast, but an American fisherman may not buy them for bait. This sufficiently explains the attitude taken up by Canada, as instanced by the Act of 1885, which received the royal assent in 1886, and by which American fishing vessels entering Canadian harbours (except for the four Treaty purposes) or "hovering" within three miles of the coast were to be peremptorily confiscated. This Act is still unrepealed, and would be in force now but for Mr. Chamberlain's *modus vivendi*, that has been in operation since the end of 1887.

I maintain that foreign fishermen should be treated as generously as merchantmen, and that in the interests of peace and goodwill, and in the name of international courtesy, they should be accorded a hospitable welcome with as few restrictions as the interests of the revenue of the country visited will permit. Such relations are also of considerable value from a monetary point of view to the humbler portions of the population, for it is stated on good authority that the cost of the bait alone used by each vessel engaged in the cod



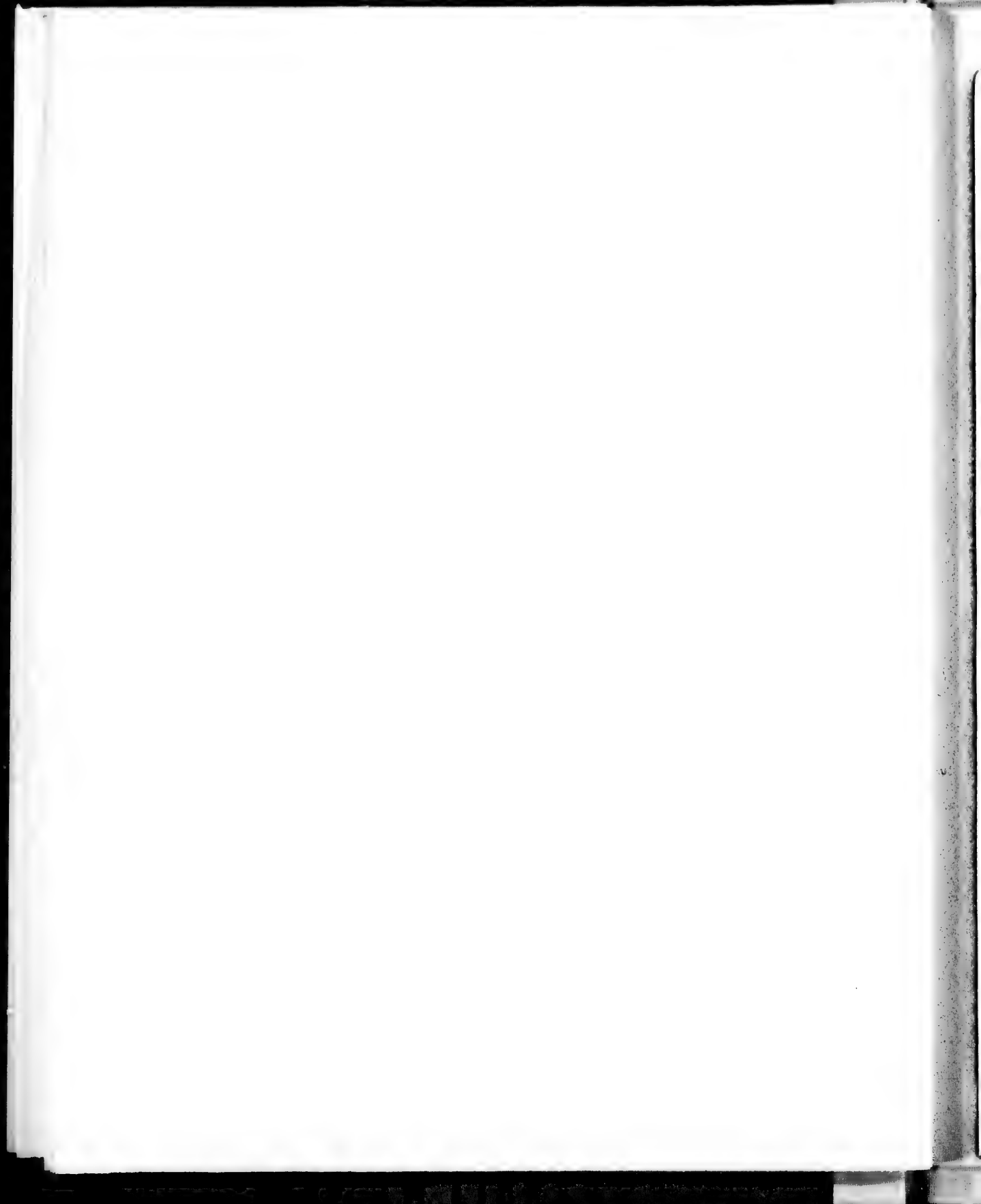
fishery amounts to as much as one-fourth of the value of the catch.

I would, however, go further, and urge that the conditions attending the successful prosecution of fisheries require that the privileges should be increased rather than diminished. Ports were made for ships, not ships for ports. Fishermen require to buy bait and to tranship their catch in smooth water at the nearest point in-shore to the fishing grounds according to where the wind may be, but they do not want to be compelled to go miles out of their way to report to a Customs officer that they want to buy a few dollars' worth of bait or ice; for a steamer a few miles, more or less, is nothing, but for a schooner an extra half-a-dozen miles up a gulf may mean the loss of a couple of days and the freshness off the bait.

I would urge that for the first three of the eleven privileges enumerated, it should be compulsory for a fisherman to visit an established port of entry. For the fourth, it should be within the power of the medical man to insist on a vessel proceeding to a port for quarantine purposes.

For the remaining seven purposes, I would urge that foreign fishermen be allowed access to any part of the coast; Nos. 5, 6, and 7 are already conceded, Nos. 8 and 9 are conceded in practice, and I have endeavoured to show that Nos. 10 and 11 should not be withheld.

It will be urged against my proposal to extend free commercial intercourse to foreign fishing vessels even with ports of entry alone, that the countries adjacent to an international fishery ought to reap some special benefit from her geographical position. But by admitting foreigners into her ports a country gains a considerable trade in supplying bait or stores, and in freights for her steamers or railways. Each maritime country is justified in protecting her own fishermen in their own market, but neutral markets should be left open to free competition in recognition of the fact, that, but for the assistance granted by the "adjacent country," many an international fishery could not be profitably made use of by other countries at all. Any attempt, however, on the part of the "adjacent country" to monopolise the fishery in any way by the exclusion policy can be evaded, more or less



easily, and the attempt recoils upon the offender in bitterness of feeling, tariff retaliation, and destruction of neutral markets by the bounty system.

The objections that will at once be raised to relieving vessels from the universal necessity of visiting a port of entry, are :—

- (1) The facilities for smuggling.
- (2) Personal offences by liberty men ashore.
- (3) Fishing inshore.

As regards smuggling, I am aware that an occasional bottle of spirits might be used as barter for bait, or for some trivial service, just as a bottle of Schiedam and a twist of tobacco occasionally finds its way into a shore-boat after a long pull out to take a pilot off a Dutch ship outside Beachy Head ; but the total amount of such petty transgressions of the law would be very inconsiderable and severe penalties would reduce them to a minimum.*

There would be less temptation to fish inshore if bait could be freely purchased at any spot, and the means of detection would be as great as before. I think that the second objection as to offences against the settlers is the only one of real importance.

I admit that on sparsely settled coasts it is not an unmixed blessing by any means to have numbers of able-bodied young men, speaking, it may be, a foreign language, coming ashore for a few hours and then sailing away, never perhaps to return to the same spot. Twenty or thirty young sailors landing in the neighbourhood of an isolated farmhouse are not unlikely to commit offences occasionally. These offences may range from maltreatment of the settler's wife or daughters, or burning his house down in a drunken frolic, down to stealing a chicken. The offence may be committed

* On the 28th September, 1890, T. Donohue, the master of a small pearling schooner, gave a glass of gin to two aborigines on the West Australian coast who had been carrying firewood to the ship. This was contrary to a beneficent law no doubt, and on the 12th December a summons was issued against Donohue, who was at sea some three hundred miles away, and he was sentenced to a fine of £40, besides £24 17s. expenses, or nine months' imprisonment. This heavy sentence may probably be attributed to reasons other than the actual offence, and I would deprecate sentencing a man who was unavoidably absent ; but I imagine that pearlery frequenting that coast will in the future be very careful not to break the law, and I quote this instance to demonstrate a heavy punishment for a petty offence.

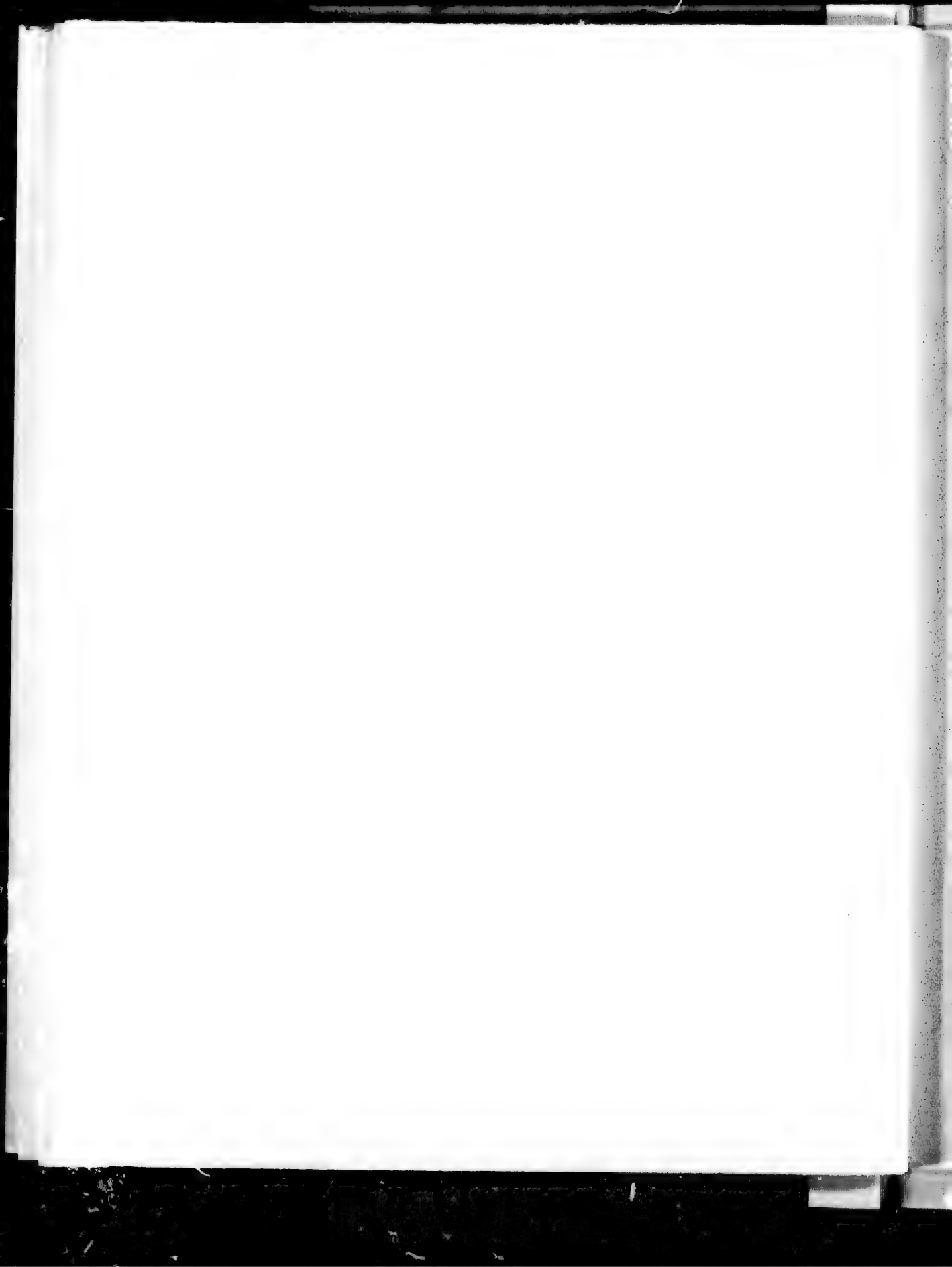
with the full knowledge of an almost certain immunity from punishment, as the vessels visiting a foreign coast for a few hours occasionally conceal their identity by hanging a sail or cloth over the name painted on bows and stern, and they may be only waiting for the turn of the tide or a shift of wind to sail away.

In order to provide against such acts, and to facilitate identification, it would be advisable that every vessel fitted out for ocean fishing should be compelled to paint upon her bows and quarters a distinguishing letter and number not less than 18 inches in length, in a conspicuous colour, and also to have the same mark upon her jib, foresail, and mainsail, in still larger size. In addition also to the liability of the vessel to the jurisdiction of the country whilst within territorial waters, it would be necessary for the nations to agree that the local arm of justice should be made capable of abnormal extension, like the tentacle of an octopus, to follow offenders beyond territorial waters, for the due examination of charges and punishment of offenders. This is not a great return to ask in order to guard against abuse of the privilege I recommend to be granted out of pure courtesy. I am aware that France has strenuously objected to conceding any right to foreigners to search her flag in the matter of the slave trade; but she might well consider that the gain of unrestricted commercial intercourse with Newfoundland for her Bank fishermen would deserve substantial recognition. Without this safeguard constant friction would arise which might eventually cause a reversion to the present barbarous usage of exclusion.

Another essential condition would also have to be established, namely, that no nation shall bestow bounties on its own fishermen to interfere with the full enjoyment of neutral markets by the fishermen of the "adjacent country." Such bounties would be a sorry return for the concessions dictated purely by a sense of courtesy and friendship.

The transport of foreign-caught fish in bond by rail to another country is a distinct question that should be treated in accordance with the bonded transport regulations existing between the two neighbouring countries, in the manner adopted in the Treaty of Washington in 1871.

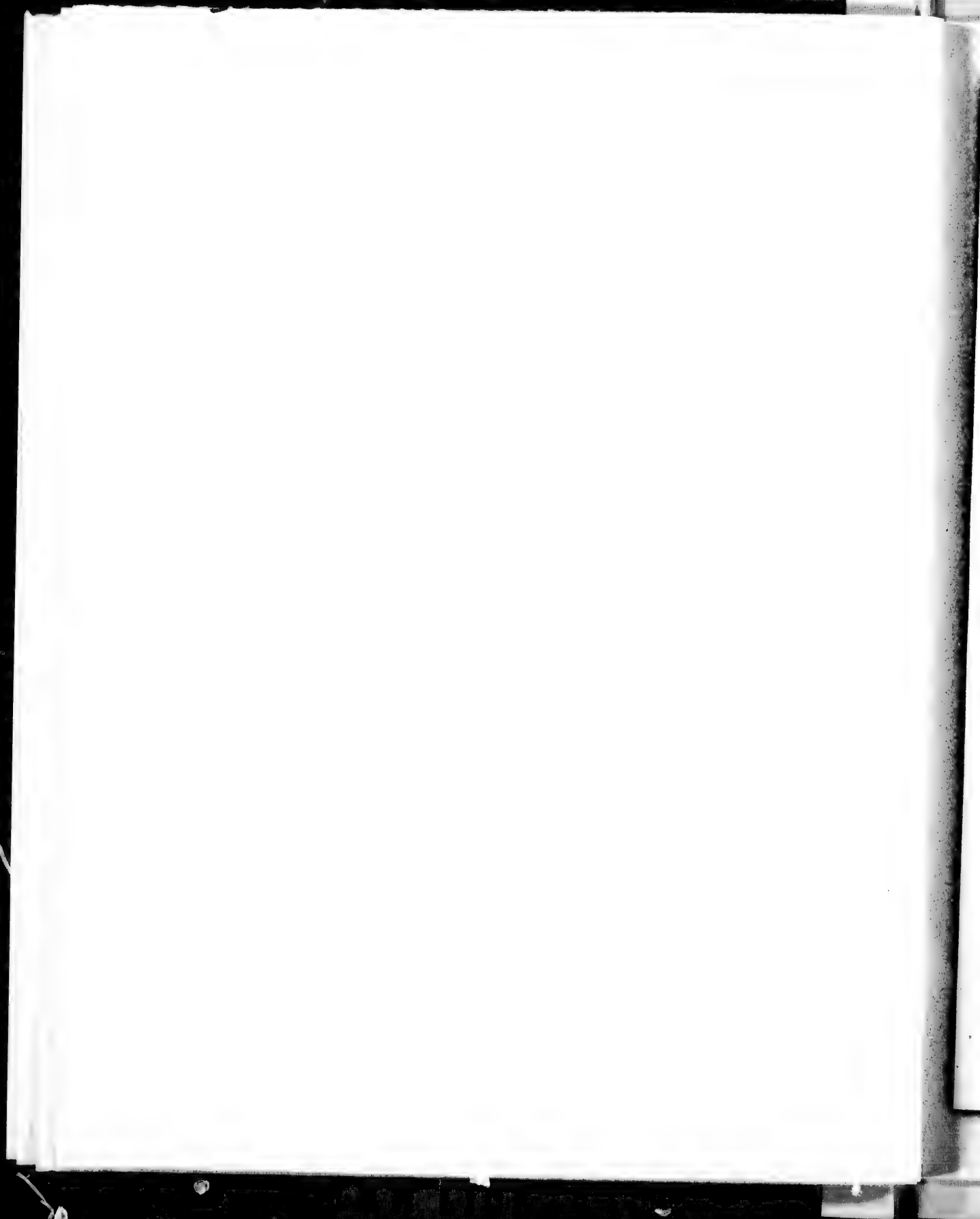
Dr. Geffcken in the *May Fortnightly Review*, pronounced the



— 14 —

argument of the United States to be a weak one because it appealed to international courtesy and friendship for support; but I am convinced that it is an all-important appeal, and I protest, as a fisherman, against splitting hairs as to granting vessels absolute necessities only, or full hospitality and conveniences.

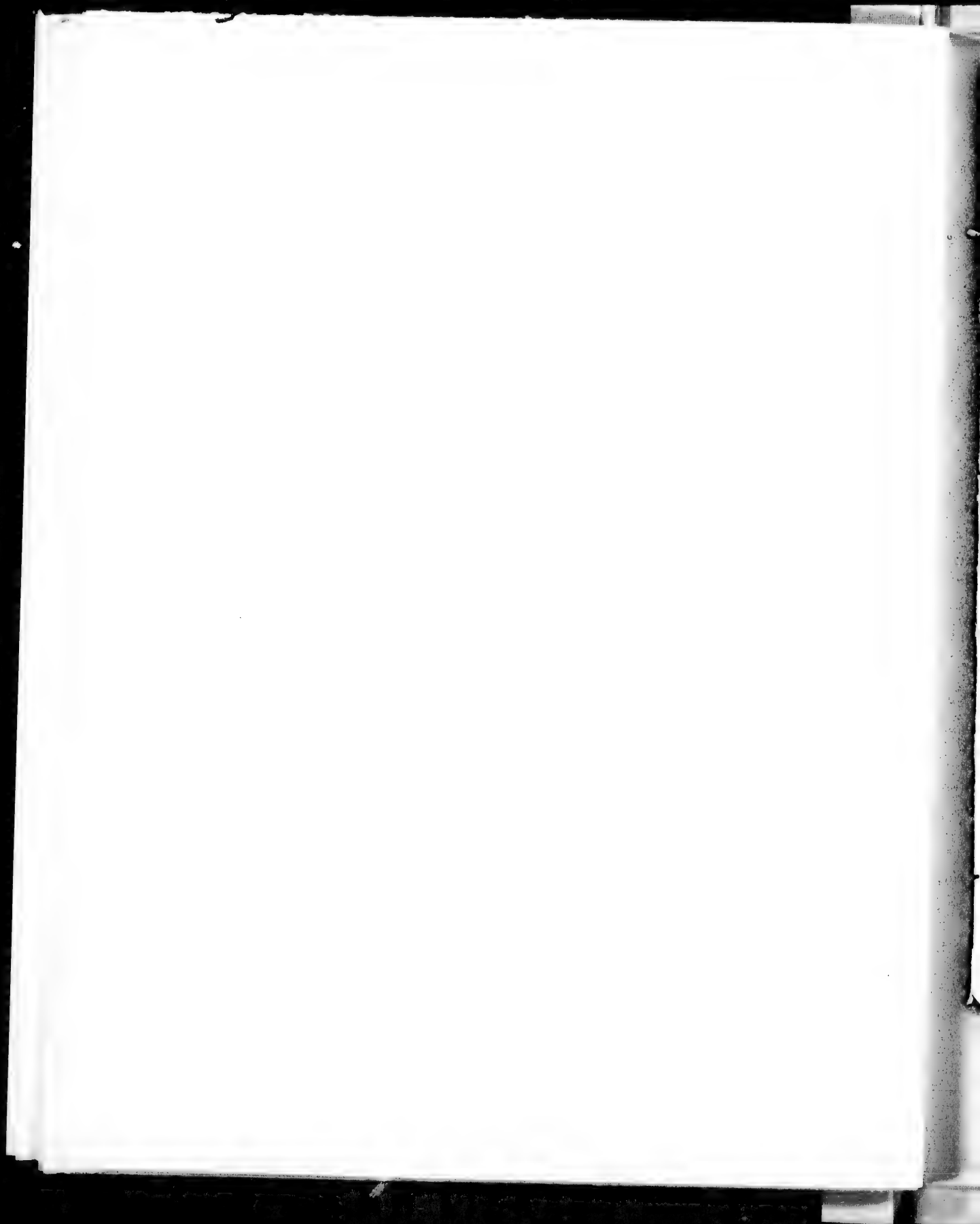
Having now set forth the basis on which I desire to see the ocean fisheries of the world worked, I will glance at each individual dispute, and consider how such arrangements would probably act, prefacing my remarks with the condition that a competent International Commission must be established to lay down from time to time the conditions necessary for the preservation of the fisheries from excessive or ill-advised operations.





Scale in Miles
0 250 500 750 1000

AMERICAN TERRITORY
RUSSIAN



PART II.

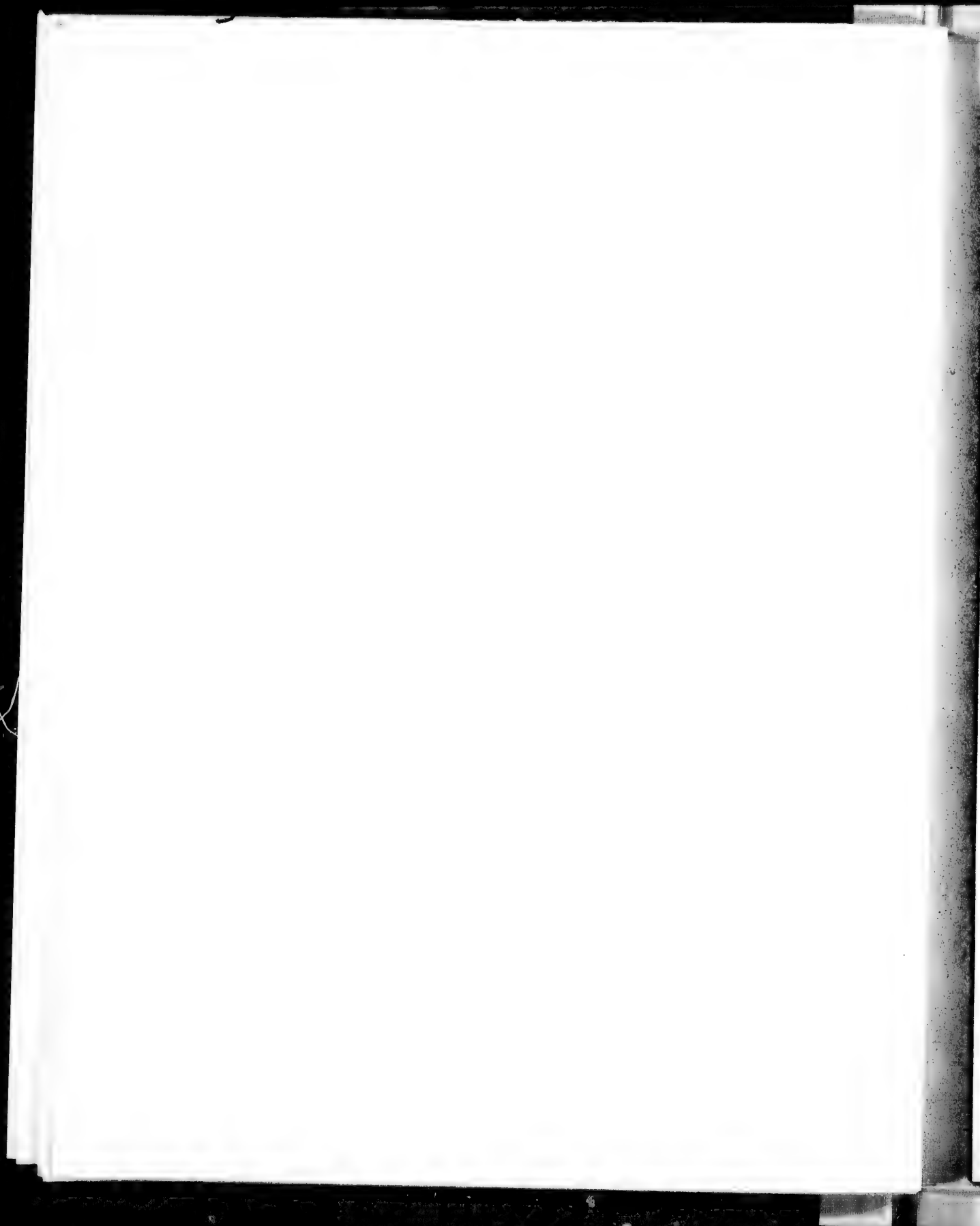
BEHRING SEA.

IF "territorial waters" receive clear definition this dispute would disappear. Lord Salisbury's argument has been clear and forcible throughout, no flaw having yet been shown in it. To reassert the old pretensions of Russia, which were repudiated almost as soon as made, would be as absurd as an attempt on the part of England to induce the nations to revert to the old practice of veiling their topsails to a British man-of-war under pain of being fired into, as an obsequious mark of deference to our naval superiority.

To contend that the Treaty of 1825 did not refer to the Behring Sea because that particular portion of salt water was not specifically mentioned when referring to the Pacific Ocean would be to deprive the treaty of all *raison d'être*.

It appears probable that arbitration will be resorted to, in order to settle the general question of territoriality, while an independent examination of the same point will be made by the Supreme Court of the United States on the appeal of the owner of the *W. P. Sayward*.

If the two verdicts are in favour of the British case, the generally understood basis of territoriality will remain undisturbed. If they are both in favour of the American case, that basis will be called into question all over the world. If arbitration favours the British view, and the Supreme Court is of an opposite opinion, or if the two verdicts are the other way about, still greater necessity is shown for an international conference to settle the principles by which territorial waters are to be defined under all



the many varying conditions existent, so that they may be laid down by chart, and the national maritime proprietorships, subject to a common right of way, may be clearly known.

CANADA, NEWFOUNDLAND, AND THE UNITED STATES *re* THE NEWFOUNDLAND FISHERIES.

If my arguments were accepted Great Britain would voluntarily waive the clause in the Treaty of 1818 whereby the United States renounced all claim for American fishermen to visit the British North American coasts (with certain exceptions) for any purpose except for "wood, water, shelter, and repairs."

It is evident that at that period of history such a policy was not looked upon with any feeling of repugnance, Lord Bathurst having written in 1815 to the admiral in command of the station that he should exclude fishing vessels of the United States from access to British possessions, and confirming the same to the Governor of Newfoundland by saying that "the subjects of the United States can have no pretence to any right to fish within British jurisdiction, or *to use the British territory for purposes connected with the fisheries.*" The course of time has brought a change, and broader views have gradually become more general; nevertheless, the fact of such a clause being inserted in the Treaty at all is evidence that a vague feeling was present that seafarers of all descriptions had some general claim to the hospitality of the coasts, in the same way that uncivilised islanders with but few exceptions, accord a welcome to any stray whaler or pearler; moreover, be it remembered that savages who molest mariners and "*confiscate*" their vessels receive even now chastisement from British and French men-of-war. In principle, the Canadian Act of 1886 is not much higher than the savage instincts of the cannibal Solomon Islanders. We are improving, all the same, for in 1871, fifty-three years after the execution of the Treaty in question, Lord Kimberley, Secretary of State for the Colonies, wrote to the Governor-General of Canada as follows:—

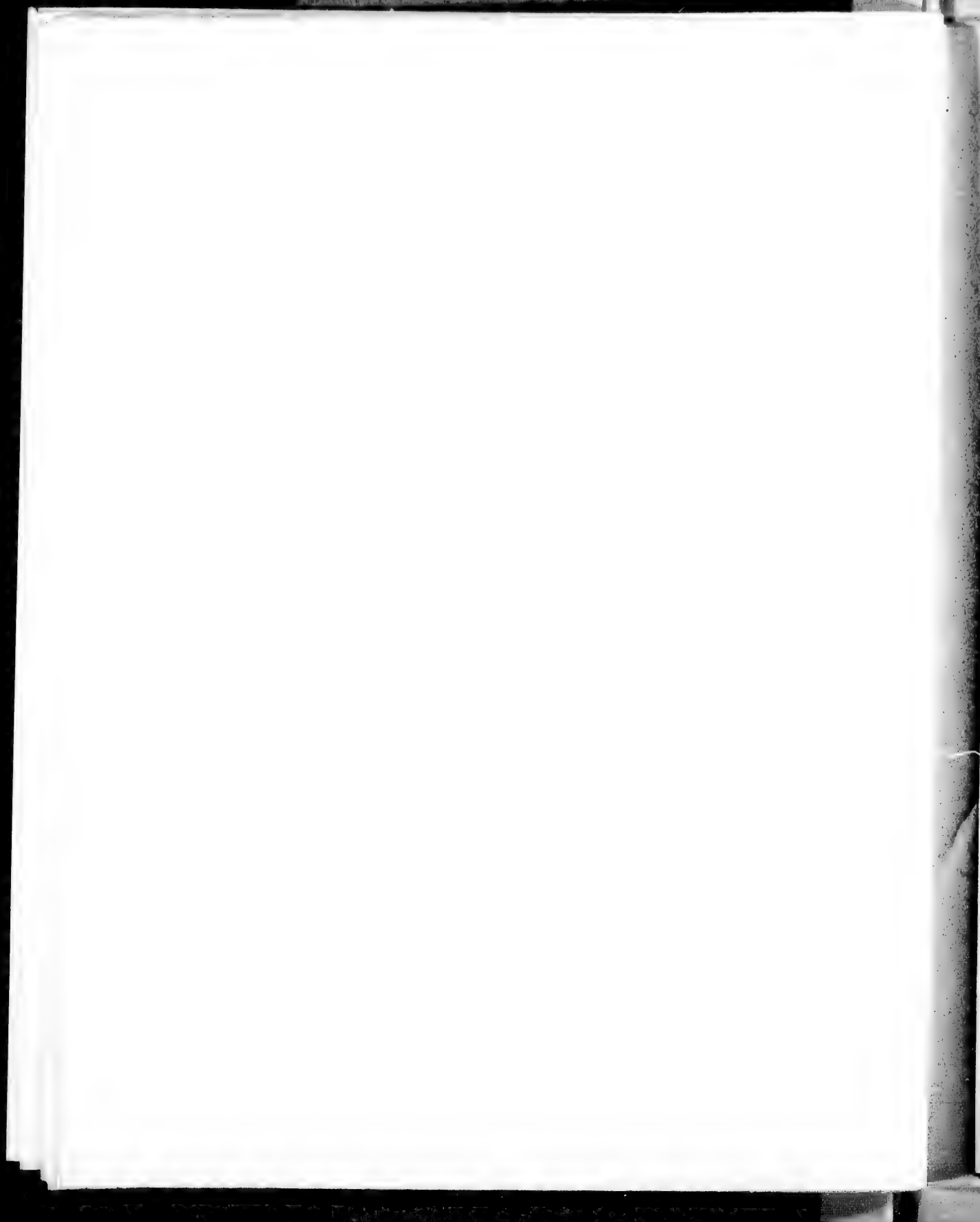
"The exclusion of American fishermen from resorting to Canadian ports, except for the purpose of shelter and of repairing



damages therein, purchasing wood, and obtaining water, might be warranted by the letter of the Treaty of 1818, and by the terms of the Imperial Act 59, Geo. III., cap. 38; but Her Majesty's Government feel bound to state that it seems to them *an extreme measure, inconsistent with the general policy of the Empire*, and they are disposed to *concede this point* to the United States Government, under such restrictions as may be necessary to prevent smuggling, and to guard against any substantial invasion of the exclusive rights of fishing which may be reserved to British subjects."

Later on the rejected Treaty of 1887 granted full commercial intercourse on condition that Canadian-caught fish were admitted free into American markets; but it had this defect, that by ratifying the same the Senate would have endorsed the false principle of discrimination between freight-carrying and fishing vessels. The *modus vivendi* which has been so freely accepted by American fishermen, granted the desired privileges on payment of a license fee only, these fees amounting to \$16,000 in the year 1890. To withdraw this license fee, or to substitute another reason for it, such as duly marking the hulls and sails of fishing vessels for the purpose of identification, would be equivalent to waiving the renunciation clause of the Treaty of 1818, and putting an end to the question. I am aware that voices are being raised in Canada calling for the discontinuance of the Chamberlain *modus vivendi*; these are probably the voices of Canadian deep-sea fishermen who are not content with the chance of selling their catch to American or French craft, but still hanker after the forbidden American market; the humbler long-shore fisherman who earns a welcome trifle now and again in selling bait and ice to the strangers, has less facility for making his voice heard.

At the same time, while receiving such important modifications of the Treaty of 1818, the United States might reasonably be asked to cancel the Treaty clauses under which they obtain rights of fishing in both Canadian and Newfoundland in-shore waters, if only for the sake of establishing uniformity of practice, and to avoid cause for future friction. The in-shore fisheries in 1818 were more highly valued than at the present time, and the American negotiators congratulated themselves on securing them



at the cost of a renunciation which is now bemoaned and characterised as unfriendly.

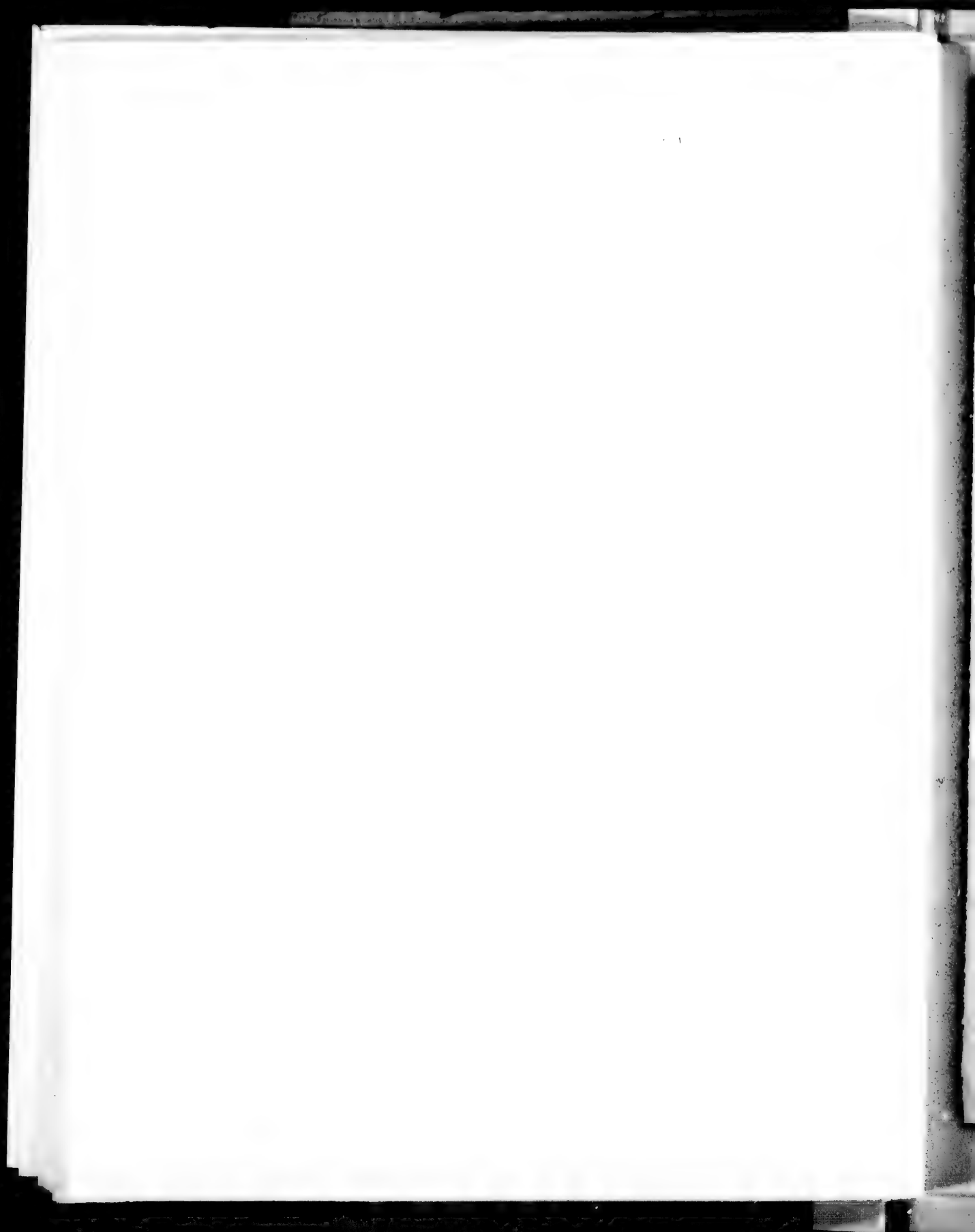
FRANCE AND NEWFOUNDLAND *re* THE "FRENCH SHORE."

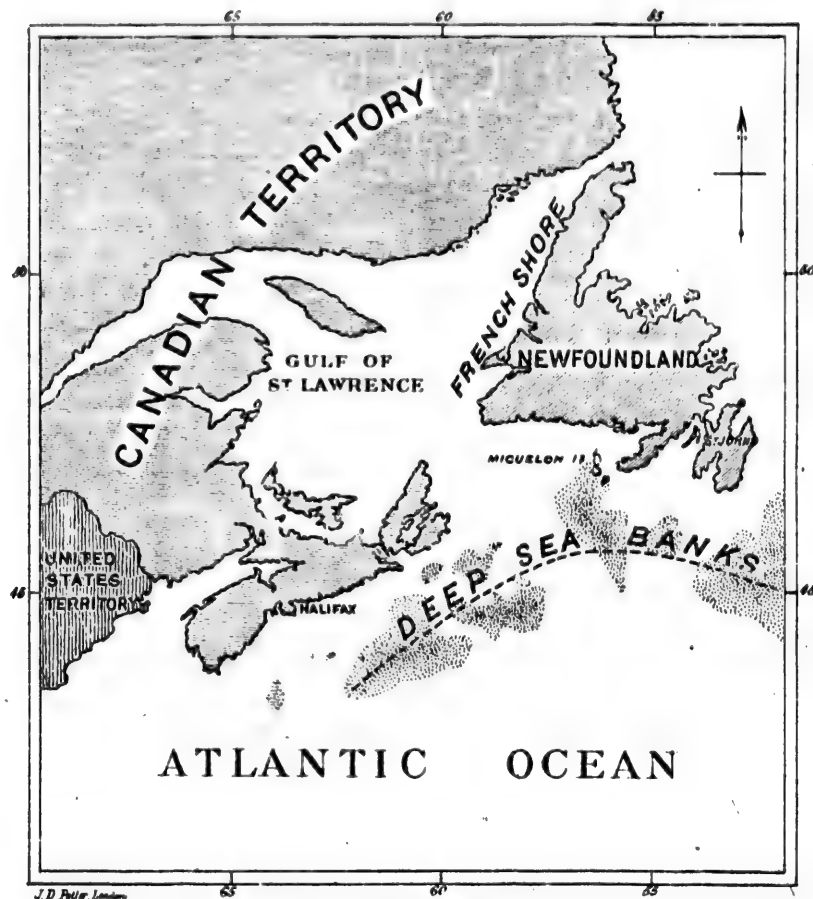
This is a very different question, and depends upon the interpretation of the Treaty of 1713 and its subsequent confirmations. Great Britain and France have agreed to submit to arbitration the question whether France has the right to catch lobsters on the West Coast of Newfoundland, and to preserve them ashore. The verdict will practically answer the disputed points:—

- (a) Whether France has general fishery rights there, or is only entitled to take cod.*
- (b) Whether such right, granted in 1713, excludes British subjects from any concurrent right of fishing, notwithstanding that England granted fishery rights to the United States in 1783 and 1818 on this identical coast; it should also explain the meaning of the Declaration of 1783, where it is stated that the method of fishing shall remain unchanged, and "shall not be deviated from *by either party*."†
- (c) Whether Frenchmen can erect lobster-canning establishments ashore, and permanently occupy the ground free of cost, in the face of the stipulation in the Treaty of 1713, limiting them to the erection of temporary drying stages of boards.

* Monsieur Flourens has taken up the cudgels for his country, and tells us that the French text of the Treaty of 1713 employs words distinctly embracing all sorts of fish, but he refrains from quoting that text. The British versions of the Treaties of Utrecht and Paris do not exhibit any concise phraseology on the point, although they are not so vague as the Treaties of 1854 and 1871 with the United States, wherein the term "*shell-fish*" is employed without definition whether crustaceans or molluscs or both are meant.

† Dr. Geffcken refers to a Treaty of 1857, in which the term "*à l'exclusion des Anglais*" appears; but this Treaty appears to have been rejected within two months of its arrangement, and never ratified.





J.D. Potter London

Scale in Miles
0 100 200 300 400 500

BANKS FAINTLY SHADED
CANADIAN TERRITORY
U. S.
NEWFOUNDLAND



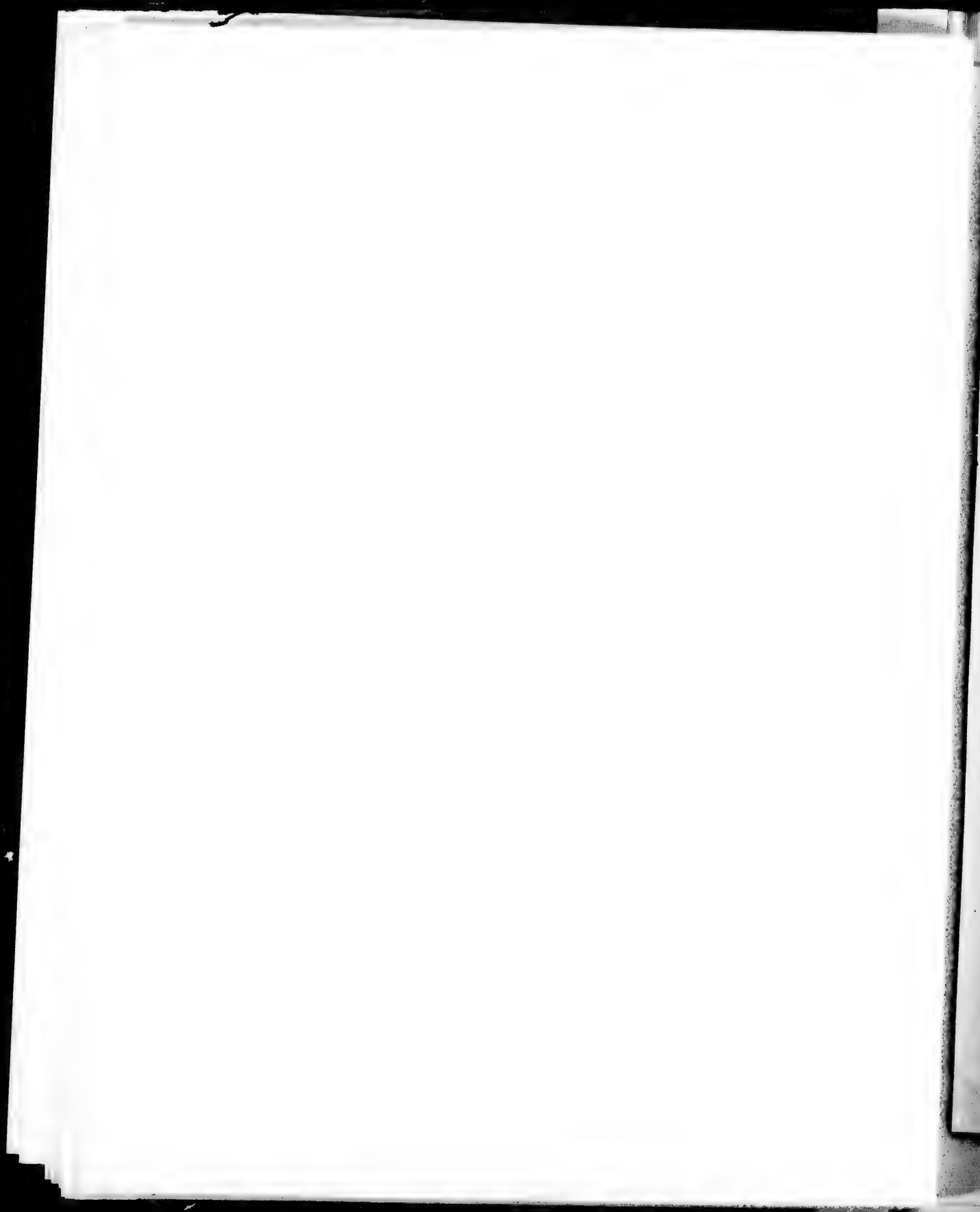


On this latter point France raises the counter question as to the right of Newfoundlanders to erect lobster factories at all, on the plea that such factories injuriously affect French fishermen: this practically amounts to a claim to prohibit all occupation of the coast and thereby hinder all development of the valuable Hinterland. This contention will necessitate a close scrutiny of the bygone acts of demolition, whereby, in conformity with the King's Declaration of 1783, buildings belonging to British subjects were pulled down; it is necessary to ascertain whether such demolition was universal, indicating an intention to keep the coast unoccupied; or whether it referred to the buildings of British cod-fishermen only, and was carried out to leave the fore-shore free to both sets of fishermen for fish curing purposes. That the presence of British subjects on that coast all the year round was anticipated, is clear by the fact that they were to be prohibited from injuring the French scaffolds during their owners' absence in the winter months. It will also be necessary to ascertain how soon after these demolitions fresh buildings were erected by British subjects, and whether French protests were lodged against them, and how soon; protests against any occupation of the coast lodged by Frenchmen contemporaneous with the actual parties subscribing the Treaty of 1783, at a time when the spirit of the agreement was fresh in the mind of the public, would be of greater prima-facie value than protests by a later generation availing itself of the ambiguity of the Treaty to set up what has now become practically a claim of quasi-territorial rights inimical to the exercise of British sovereign rights. The verdict of the arbitrators on the lobster question will, it is hoped, involve the settlement of the more serious question of the development of the Hinterland, and define the French rights, and so leave England in a position to negotiate for their modification or extinction; but even in the event of France receiving a full verdict on all points, it will still remain incumbent upon her people, as one of the most advanced nations of the world, to recognise that Treaties arranged in olden days may contain clauses unworthy of civilisation, and to consider whether they can afford to retard the development of a Colony of a nation with which they profess to be on friendly terms, by clinging tenaciously to rights that would cease



in themselves to be of national importance if the deep-sea Bank fishery were placed upon a permanently satisfactory footing. The inshore Western fisheries can never afford the scope requisite for the training of sailors for the French navy, but a more excellent nursery for able-seamen than the Bank fishery cannot be found.

Time must be taken to come to an understanding; and the impatience of the Colonists at the intolerable state of things now prevailing must not lead them to imagine that Great Britain should immediately proceed to extremities with her neighbour. The present violent excitement would imply that the situation is something quite new, whereas it is not so, although its inconvenience is annually becoming greater, owing to the growth of the population. They must bear in mind that the Colony forms but a small portion of the great Empire, in the building up of which a great debt has been incurred; and to remember that they are not asked to contribute towards paying off that debt, or towards the naval and consular services they benefit by. Until the arbitration is concluded the *modus vivendi* must be enforced; but until the verdict is given the English interpretation of the treaties is as worthy of respect as that of the French, and France should exercise all possible moderation in her demands for protection against the encroachments of her fishermen's rivals. Great Britain has protested for many years on paper, at least, against the French claims, and she may well look to France in the present critical juncture to refrain from asking her to continue supporting and allowing French war-vessels to support French fishermen against Newfoundlanders, by taking up the nets and lobster-pots of the latter to enable the former to plant their own, or by destroying their fishing-gear, or by ordering British fishermen at anchor to proceed to sea, on the excuse that Frenchmen might arrive and want to fish there.



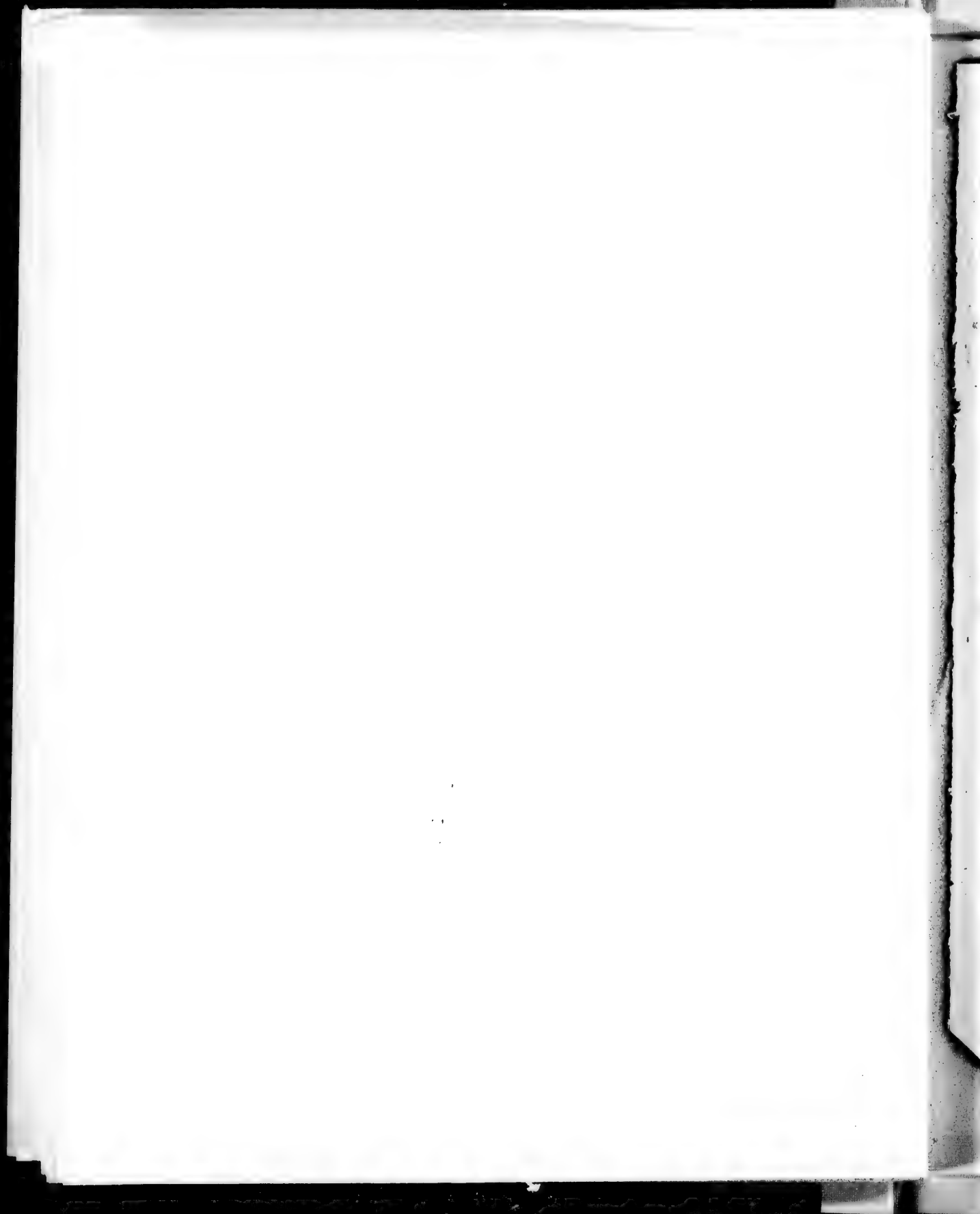


J.D. Potter, London

Scale in Miles



DUTCH TERRITORY
AUSTRALIAN



FRANCE AND THE NEWFOUNDLAND BANK
FISHERIES.

If my arguments were accepted free commercial intercourse would be accorded to French fishing-craft both on Canadian and Newfoundland coasts, and the exasperating difficulties in obtaining bait would at once disappear. By similar recognition of the claims of international courtesy France would cease to deprive Newfoundland of all share in the neutral markets of the Mediterranean, and withdraw all bounties on the men employed in and the fish caught by French vessels. The game of bounties is one that can be played by both sides, and the cutting off of the supply of bait can be avoided by arrangements for the purchase of bait from Canadian and other vessels. Remove these difficulties, and the "French shore" will have lost any possible advantage as baiting-ground for the "Bankers." By the recognition of the arguments for free commercial intercourse France could hardly refuse to act accordingly, and throw open the islands of St. Pierre and Miquelon to British vessels for shelter and supplies, and thereby remove another source of complaint.

WESTERN AUSTRALIA AND BRITISH PEARLERS.

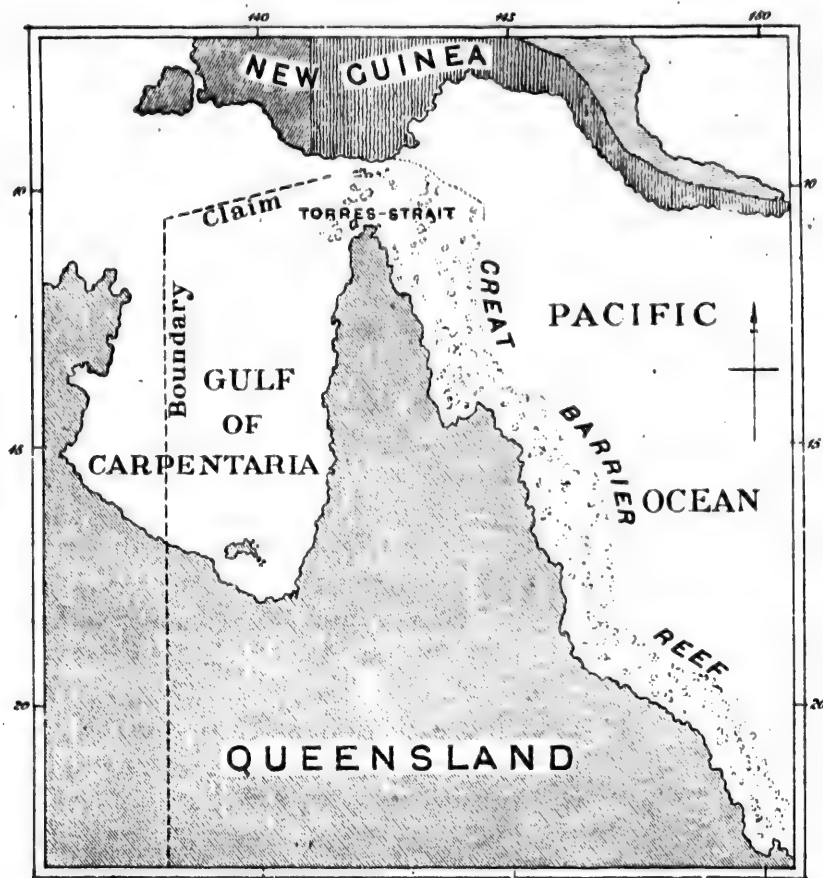
If my proposals are adopted within the Empire as well as internationally, not only would the territorial waters of the Colony be largely increased on the north-west coast, and embrace much valuable diving-ground now beyond the three-mile limit, but free commercial intercourse, on the other hand, would release the British pearlery who elect to fish exclusively off-shore from the obnoxious import and export duties now levied on them. This state of things arises from the Imperial Parliament having taken a new departure in 1885, in granting to the Federal Council of Australia powers to legislate over extra-territorial fisheries. The Federal Council exercised this power in 1889 by passing an Act authorising Western Australia to apply her local Pearl Fishery Acts "*and also any Acts amending any of the same*" to British vessels working there although in 1888 Lord Knutsford had

THE
JOURNAL OF
THE
ROYAL ANTHROPOLOGICAL INSTITUTE

declared that these Acts could not be properly so applied. The royal assent was accorded to this Act in 1890, notwithstanding the protest of the London Chamber of Commerce, and the House of Commons declined to remedy matters when granting responsible government to the Colony and surrendering control of the whole of that enormous territory. The Federal Council Act could not have been made to apply to foreign flags, but the Colonial Office, in order to defend itself against the charge of assenting to discrimination against the British flag, officially intimated readiness to force foreigners also to submit to the operation of the Act if they engaged in the off-shore fishery and came in-shore to refit. That is to say, Her Majesty's Government of 1890 were willing to carry out what Her Majesty's Government of 1871 condemned as "*an extreme measure, inconsistent with the general policy of the Empire.*" (See page 17.) The House of Commons was led astray by Baron de Worms, who denied, and by Sir Richard Webster, who declined to admit, that the Federal Council had delegated their powers to Western Australia in spite of the clause of the Act above quoted, and consequently that Western Australia had any power to alter matters.

A memorial addressed to the Federal Council has been signed by Mr. Chamberlain, Mr. Morley, the London Chamber of Commerce, the General Shipowners' Society, and other influential names, asking for a reconsideration of the Act of 1889. In reply to inquiry the Colonial Office stated last December that the Federal Council would not meet until after the Federal Convention now sitting in Sydney had finished its deliberations; in consequence of this assurance the petition did not leave England until the 9th January, but the Federal Council met on the 20th January, and closed its session on the 24th January, therefore the petition did not reach Australia in time. It must, however, be taken into consideration at some future time either by the Federal Council or by such legislative body as may be substituted for it. It will be interesting to note the reception accorded to it, but there is little doubt that if no amelioration of the position takes place the pearling fleet will pass to a foreign flag.





J.D. Potter London.

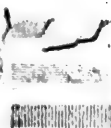
Scale in Miles



DUTCH NEW GUINEA

GERMAN " "

BRITISH " "



THE
LIBRARY
OF THE
MUSEUM OF
COMPARATIVE ZOOLOGY
AND
ANATOMY
OF THE
MUSEUM OF
COMPARATIVE ZOOLOGY
AND
ANATOMY

QUEENSLAND PEARL FISHERIES.

The memorial to the Federal Council draws attention also to the Act of 1888, whereby *British* pearlers in extra-territorial waters west of Torres Straits are brought under the jurisdiction of Queensland, and compelled to take out licenses to fish. It so happens that no particular hardship is inflicted in practice at present by this Act, but the principle is bad, disregarding the comity of nations as regards territorial waters and discriminating against the British flag.

CEYLON AND INDIAN PEARL FISHERIES.

Mr. Blaine refers to these, and argues that as England has been left in undisturbed enjoyment of them, so the United States should claim proprietary rights in the Behring Sea because British fishermen for many years had not taken part in fishery operations there. If, however, an American vessel made a raid on the Ceylon banks, which lie far beyond the three-mile limit, and that vessel were seized and taken into Colombo, would Mr. Blaine acquiesce? The Act of 1811 prohibiting fishing on these pearl banks cannot now be applied to foreigners, whatever Great Britain may have thought in 1811. That a stranger could embark in a new and special industry such as pearling, with success, is quite another matter, but the Australian pearling fleets are in a position to do so with a change of flag. The loss of a contribution to the Ceylon Treasury of some £50,000 every other year would be a brilliant sequel to Lord Knutsford's handling of the West Australian dispute; and yet such a possibility is already not much more than hull-down.

If, however, a *danger-depth* limit be added to the three-mile limit the historical pearl banks of Ceylon and India would be added to the territorial possessions and the care of those two countries, and yet leave slightly deeper ground as yet untouched for any enterprising stranger to try his skill and fortune upon.

CONCLUSION.

If my dissection of the above disputes be a just one, it must be acknowledged that the spectacle presented of great nations squabbling over the common enjoyment of what each is endeavouring to monopolise to the disadvantage of the other is indeed a pitiable one. If they have any ordinary sense of duty towards their own dignity they will make common cause in ending this ceaseless strife, and promoting peace and goodwill amongst themselves: and the defiant bray of American fog-horns will no more resound along the peaceful shores of our North American possessions; the tricolour will be welcomed instead of anathematised; the ensign of England will not be rudely torn down for the delectation of unscrupulous politicians, and there will be peace.

T. H. HAYNES.

MUSTAPHA SUPÉRIEUR, ALGIERS,
1st April, 1891.